SUPREME COURT, U. S

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1974

No. 74-

LONNIE STURGIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner, Lonnie Sturgis, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court, affirming the judgment of the Appellate Court of Illinois, which in turn affirmed the judgment of conviction and sentence entered and imposed by the Circuit Court of Cook County, Criminal Division. The judgment

of the Circuit Court of Cook County is not reported. The opinion of the Appellate Court of Illinois is reported in 14 Ill.App.3d 181, 302 N.E. 2d 114 (1973). The opinion of the Supreme Court of Illinois is reported at 58 Ill.2d 211, 317 N.E. 2d 545 (1974) and is attached as appendix "A" to this petition.

JURISDICTION

The judgment of the Illinois Supreme Court was entered on September 27, 1974. The jurisdiction of this Court is invoked under and pursuant to 28 U.S.C., Sec. 1257 (3).

QUESTION PRESENTED

Whether petitioner was denied due process of law and his rights under the Fourth and Fifth Amendments during his trial for possession of narcotics when the prosecutor confronted petitioner during cross examination with a sworn pretrial motion to suppress evidence and asked repeatedly whether or not the motion stated that after his arrest the police recovered items which connected petitioner with a crime.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fifth Amendment to the Constitution of the United States:

> "No person . . . shall be compelled in a criminal case to be a witness against himself . . ."

Fourteenth Amendment to the Constitution of the United States:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATUTE INVOLVED

Ill. Rev. Stat., ch. 38, sec. 114:

> (b) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.
>
> * * * * *
>
> (c) The motion shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion.

STATEMENT OF THE CASE

On July 9, 1970 Chicago Police officers had a warrant for the arrest of petitioner. On July 9, 1970, Chicago Police officer Wayne King, who was working with a team of narcotics officers received a phone call from an informant. Officer King and Officers Westbrook and Arnold then drove to meet the informant near Seely.

After meeting with the informant, the informant left and returned five minutes later, while Officers King and Arnold waited near Seely and Madison. Officer Westbrook then drove his car to 2114 West Madison Street. There Westbrook observed petitioner pick up a red Winston cigarette package, remove a tinfoil packet from it and give it to an unknown man after receiving some money from him. Officer Westbrook then signaled the other two officers who had been positioned where they could not see petitioner (A. 8). The other officers, King and Arnold, pulled their unmarked squad car along side his car (A. 12).

Westbrook told them what he had seen and pointed to the Winston cigarette package, which was lying on the street. Officer King saw the cigarette package (A. 8).

Officers King and Arnold went over to where petitioner was. Officer King picked up the cigarette package from about two feet from petitioner (A. 8, 10). King handed the cigarette package to Arnold who examined it and placed it in his pocket. It was later inventoried. Petitioner was then placed under arrest as he was sitting in a doorway at about 2114 West Madison Street (A. 14). The police officers conducted a pat down search of defendant on the street, (A. 15) and then transported him to police head-

quarters at 11th and State Streets where they conducted a very thorough search of his person. No contraband was recovered during either search (A. 16).

Prior to trial the Public Defender, who had been appointed to represent petitioner, filed a written motion to quash the arrest and suppress evidence. The motion was a general typed form motion with petitioner's name, the date and place of arrest added in ink, which was directed to physical evidence seized after the arrest and to line-up and photographic identifications—items obviously inapplicable to the case at bar.

This general form included the following paragraphs:

> "1. On 9th of July, 1970, petitioner was arrested at or near 2114 W. Madison, Chicago, Ill.
>
> • • •
>
> 8. During the arrest and subsequent detention, the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence all the direct and indirect fruits of the arrest and detention, which connect petitioner with a crime." (R. C24-C25)

The motion was followed by a paragraph reciting under oath that petitioner had read the preceding petition, that he knew the contents thereof and that the same were true. The statement was signed by petitioner and notarized. (A copy of the motion to suppress is attached as Appendix "C" to this petition.)

Petitioner agreed that the motion be heard along with the evidence at the time of trial. During the State's case in chief, Officers Westbrook, Arnold and King testified to the facts leading up to defendant's arrest.

Westbrook also testified that inside the Winston cigarette case he found 26 tinfoil packets. He sent the cigarette packages and the tinfoil packets to the crime lab.

Sergeant Vondrak, a police chemist testified that he analyzed three of the 26 tinfoil packets and found that all three packets contained heroin (A. 11).

At the close of the State's case-in-chief the trial court denied petitioner's motion to suppress.

Petitioner testified in his own defense at the trial and testified that he was arrested at 2117 West Madison Street. He also testified that after his arrest the police did not take any evidence from him other than his own wallet. The wallet contained $6.00 U.S. currency. He also testified that he did not see a Winston cigarette package until he was in the police car after the arrest and one of the officers got in the car, showed him a Winston package, and asked him whether it was his (A. 17-18).

During cross examination the prosecutor had the pretrial motion to suppress marked as an exhibit. At a sidebar conference out of the hearing of the jury, defense counsel argued that a bare legal motion which alleged facts to establish standing should not be used against him. Counsel also pointed out that this was a form motion prepared by him. The objections were overruled (A. 18-19).

The prosecutor then proceeded to elicit a denial from defendant:

> Mr. Onesto: Q. Did the police officers ever take any physical evidence away from you, any tinfoil packets or any cigarette package whatsoever?
>
> The Witness: A. No, sir.
>
> (A copy of the entire cross, redirect and recross examinations of petitioner reproduced here in part, is included as Appendix "B" to this petition.)

The prosecutor then showed him the motion (marked People's Exhibit 8) and elicited testimony that he had signed it. The prosecutor also asked whether the motion alleged that he was arrested "at or near 2114 West Madison, Chicago, Illinois (A. 20). (Apparently an attempt to impeach petitioner's testimony that he was arrested at 2117 West Madison.)

Again over objection, the prosecutor then put the following questions:

> Mr. Onesto: Q. Did you state that during your arrest the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence, all the indirect proof of the arrest and detention which would connect the prisoner with the crime? Did you say that in your petition?
>
> The Witness: No.
>
> Q. You didn't say that, all right. I ask you to examine Paragraph 8 of People's Exhibit No. 6 for identification.
>
> Mr. Schwartz: I'm going to object again, Judge.
>
> The Court: Overruled.
>
> The Witness: A. Yes.
>
> Mr. Onesto: Q. All right, now, I will again ask, referring to Paragraph 8, did you not in Paragraph 8 under oath state to this Court that during the arrest and subsequent detention the police and prosecution became aware of the physical evidence, the witnesses and other evidence, all the direct and indirect fruits of the arrest and detention which connect the Petitioner to the crime?
>
> A. Not directed to the possession, the sale.
>
> Q. Didn't you say that in your petition on this particular indictment?

Mr. Schwartz: Your Honor, may we approach the bench again, please.

The Witness: He's trying to cross me up.

Mr. Onesto: Q. No, I am not, sir. (A. 21, 22)

Another side bar conference was held during which defense counsel restated his objection, which was again overruled. (A. 22)

The prosecutor continued:

Mr. Onesto: Q. May I ask you again, Mr. Sturgis, did you not say in your petition which is marked filed April 23rd that during the arrest and subsequent detention the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence, all the direct and indirect fruits of the arrest and detention which connected the Petitioner with the crime; didn't you say that?

The Witness: A. I didn't write that out, I didn't write that motion out, my lawyer did. Pardon me, he, the Court-appointed lawyer for me. He wasn't my choosing.

Q. Your lawyer drafted the motion, right?

A. That is what he told me it was, yes.

Q. All right, you came before the Court and you raised your right hand and you swore that the contents of this motion to the best of your knowledge was the truth and nothing but the truth?

A. I was informed that the motion was to suppress the evidence.

Q. You signed this motion, didn't you?

A. Yes.

Q. And you swore that the contents of this motion were the truth, didn't you, before this Court? Well, I am waiting for an answer, Mr. Sturgis.

Mr. Schwartz: Objection to the comment of the State's Attorney.

The Court: Overruled.

Mr. Onesto: Q. Will you answer? (A. 23)

The Witness: A. I am not going to answer the question.

Q. You are not going to answer the question?

A. I say how am I going to answer the question when I don't understand it.

Q. Let me put it again and if you don't understand it, you say so. You recognize this exhibit as a petition which you signed, do you not, People's Exhibit No. 6?

A. Yes.

Q. And on the date that this exhibit was filed before the Court you took an oath that the contents of this particular exhibit was the truth, isn't that so?

Judge, may we have the witness answer the question?

The Court: Do you understand the question, Mr. Sturgis?

The Witness: No, sir.

Mr. Onesto: Q. Let me ask it another way, Mr. Sturgis. People's Exhibit No. 6 for identification, you were present on the date it was filed in Court, were you not?

The Witness: A. Yes.

Q. All right, when you came into the courtroom you stood before this very bench, did you not, sir?

A. Yes.

Q. And you signed your signature to the last page of the petition, did you not?

A. Yes, sir.

Q. And before you signed your signature, you raised your right hand and the clerk administered an oath, did he not?

A. Yes. (A. 24)

Mr. Onesto: Judge, I have no further questions.

On redirect examination petitioner testified that he signed the motion at the direction of his attorney. Petitioner added he did not know the meaning of the exclusionary rule. (A. 25)

On cross the prosecutor continued to question petitioner, who stated that he had not read the motion. The prosecutor then asked several times whether petitioner had signed under oath a document that he had not read. (A. 26-27)

A motion for a mistrial made out of the presence of the jury was denied. (A. 27)

The jury returned a verdict of guilty and defendant was sentenced to 5 to 10 years in the Illinois State Penitentiary.

Petitioner appealed his conviction to the Appellate Court of Illinois, First District, where he argued that the attempted inpeachment of defendant by use of the motion to suppress was error. The Appellate Court rejected this argument and affirmed petitioner's conviction. (*People* v. *Sturgis*, 14 Ill.App. 3d 181, 302 N.E. 2d 114 (1st Dist. 1973)).

A petition for leave to appeal to the Supreme Court of Illinois was granted. On appeal to that court petitioner again argued that the prosecutor's use of the motion to suppress for impeachment at trial had denied him a fair trial. His conviction was affirmed by the Supreme Court of Illinois on September 27, 1974. *People* v. *Sturgis*, 58 Ill. 2d 211, 317 N.E. 2d 545 (1974). Mr. Justice Goldenhersh filed a dissenting opinion.

REASONS FOR GRANTING THE WRIT

1.

THE LOWER COURT MISINTERPRETED AND MISAPPLIED HARRIS v. NEW YORK AND WALDER v. UNITED STATES TO ALLOW IMPEACHMENT BY MEANS OF A WRITTEN MOTION TO SUPPRESS WHICH ALLEGED MERE CONCLUSIONS IN SUPPORT OF PETITIONER'S STANDING TO BRING THE MOTION AND WHICH WERE NOT MATERIALLY INCONSISTENT WITH HIS TRIAL TESTIMONY.

Petitioner respectfully requests that this Court review the decision of the lower court allowing the prosecutor to attempt to impeach petitioner by means of a written pretrial motion to suppress prepared by his lawyer which was filed for the sole purpose of obtaining a hearing to test the validity of the arrest. Petitioner offered no testimony on the motion and the motion itself did not allege that petitioner ever possessed the heroin or that the heroin was taken from him during the arrest. In attempting to impeach petitioner's trial testimony that he did not possess the heroin, the obvious and highly prejudicial thrust of the impeachment was to call to the jury's attention that petitioner filed a sworn motion alleging in conclusory fashion that as a result of his arrest the police recovered certain items which connected him with a crime.

The lower court held that the motion was impeaching and although the prosecution could presumably have been prohibited from using the motion in its case-in-chief by *Brown* v. *United States*, 411 U.S. 223, 1973 and *Simmons* v. *United States*, 390 U.S. 377 (1968), the lower court held that *Brown* and *Simmons* must be "construed in harmony

with" *Harris* v. *New York*, 401 U.S. 222 (1971). *Simmons* held that when a defendant testifies at a motion to suppress his testimony may not later be admitted against him at trial on the issue of guilt unless he makes no objection. *Brown* prohibited direct admission at trial of an accused testimony given during a suppression hearing to establish the requisite standing under the Fourth Amendment.

Both *Brown* and *Simmons* prohibited the prosecution from direct use at trial of testimony given at a pretrial suppression hearing, but did not pass upon the question of use of such testimony for impeachment. The lower court interpreted *Harris* to allow not only impeachment by inconsistent testimony in support of a motion to suppress, a question not before the court, but to allow impeachment by means of a written pretrial motion signed and sworn to by defendant.

Both *Harris* and *Walder* are distinguishable from the instant case and do not support the result reached by the lower court. In *Harris* this Court held that a statement held inadmissible due to failure of the police to comply with *Miranda* could be used to impeach defendant at trial where his testimony materially differed from the statements. In *Walder* the Court held that heroin possessed by defendant but previously suppressed as the result of an illegal search and seizure could be used during cross-examination where petitioner had denied during his direct testimony that he ever sold or possessed narcotics. We have no quarrel with the decisions in *Walder* and *Harris*.

The facts of the instant case, however, are in sharp contrast and illustrate the mischievous uses to which *Walder* and *Harris* can be put if indiscriminately applied by the prosecution and the lower courts. The following differ-

ences between the facts of this case and *Walder* and *Harris*, or the situations to which they might reasonably apply, are significant.

1. Unlike *Walder* and *Harris*, here there was no evidence suppressed and petitioner did not attempt to use a previous order of suppression as a shield to commit perjury. In both *Walder* and *Harris* the defendants attempted to use the fact that evidence had been illegally obtained as a shield to allow them to commit perjury during the trial at which they testified to facts which were directly and completely contradicted by the evidence which had been suppressed.

2. Petitioner's trial testimony did not contradict any of the "facts" alleged in the motion to suppress. Rather, as observed by Mr. Justice Goldenhersh in dissent, the ". . . statements contained in the motion are not inconsistent with defendant's answer." (Appendix, p. 7a)

The motion to suppress contradicted neither petitioner's trial testimony nor the testimony of the State's witnesses, who testified that the heroin was found on the sidewalk near petitioner. Although petitioner testified that the police entered a nearby tavern and returned with the cigarette package, this testimony was not contradicted by and was indeed totally consistent with the conclusory allegation of the motion that the police recovered evidence which tended to connect petitioner with a crime. All petitioner was doing in his motion was to establish standing by alleging in the vagrant terms that under the State's theory of the case the evidence recovered connected petitioner with a crime.

3. The motion was not really a "statement" of petitioner, but again as observed by Mr. Justice Goldenhersh, ". . . the testimony shows beyond a doubt that the motion was pre-

pared by defendant's appointed counsel, on a printed form, and defendant had not the vaguest understanding of what it contained or what it purported to show." (Appendix, p. 7a) Although petitioner attempted to explain the motion by the fact that he signed the motion at the urging of his lawyer, this fact could only operate to compound the prejudice by communicating to the jury that petitioner's own lawyer must have thought he was guilty because he tried to hide the evidence from the jury and to this end filed a motion which concluded that the evidence connected petitioner with a crime.

4. The motion contains no specific *facts* but the mere conclusion of the pleader. In contrast, in *Walder* and *Harris* the impeachment was predicated upon specific facts which directly contradicted the denials of the accused in each case and showed him to be in all probability a liar.

5. The motion used to impeach defendant did not constitute evidence of any sort or a statement of petitioner, but was merely the procedural vehicle by which he obtained a hearing on the legality of his arrest and search. Under Illinois law such motions must be in writing and must allege "facts showing wherein the search and seizure was unlawful." (*Ill.Rev. Stat.*, Ch. 38, Sec. 114-12). In filing the motion petitioner was merely alleging "facts" or rather conclusions which gave him standing to bring the motion under Illinois law. In contrast, *Walder* and *Harris* did not involve a pleading as a vehicle to obtain a hearing, but evidence in the usual and traditional sense of the word.

The foregoing differences become even more apparent upon closer examination of the facts surrounding petitioner's arrest and the motion to suppress. The police officers testified that when they arrested petitioner they retrieved

a cigarette package containing heroin from the sidewalk about two feet away from petitioner. No one, including petitioner, ever contended that the cigarette package was ever removed from his person. This circumstance differs radically from *Walder* where petitioner was found in possession of narcotics and later denied that he ever possessed narcotics. Here no narcotics were ever found on petitioner—and there was accordingly no such fact for him to deny.

The motion to suppress alleged that during the arrest and subsequent detention, "the police became aware of physical evidence, witnesses and other evidence, all the direct and indirect fruits of the arrest and detention, which connect petitioner with a crime." The motion did not allege that narcotics were found on or taken from petitioner and could therefore not be used in such manner to impeach petitioner's denial at trial that he possessed any narcotics.

Rather, the obvious purpose of the impeachment was to confront petitioner with that portion of the motion which alleged that the fruits of the search "connect" petitioner "with a crime." To permit impeachment by means of such conclusory language in a pleading, the purpose of which was merely to obtain a hearing is to exceed totally that which was permitted by *Harris* and *Walder*.

The error here was compounded by the manner in which the cross-examination was conducted, so as to repeatedly call the jury's attention to the phrase "connect petitioner with a crime." The prosecutor asked the question three times in rapid succession and it is quite apparent on a reading of the entire cross-examination that it was this phrase which the prosecutor predicated his impeachment upon—and not the mere inconsequential difference between 2114 West Madison, as alleged in the motion, and 2117 West

Madison, as testified to. Would not any jury have reasonably concluded that petitioner was guilty because he in effect admitted that the evidence *connected him with a crime?*

To allow what happened here under authority of *Harris, Walder* is to allow impeachment of defendant by means of the mere fact of filing a motion to suppress. That this was the ground relied upon is apparent from the lower court's otherwise unexplainable conclusion that the motion was actually "impeaching."

Further illustrating why *Harris* and *Walder* are inapplicable and why petitioner was severely prejudiced by the State's conduct here is the fact that not even the State could argue in good conscience that petitioner committed perjury. Although petitioner denied that he was in possession of heroin as charged, not even the State's own evidence showed that heroin was found on petitioner. The heroin was allegedly found in a cigarette package picked up off the street—and was not, as in *Walder,* recovered from the person of petitioner.

Harris and *Walder* are intended to prevent perjury by a defendant. Where indeed is the perjury in this case? Is it perjury for a defendant to file a motion to suppress in which he alleges that evidence may "connect him with a crime"? Is petitioner not merely restating the allegations of the indictment and what the prosecutor expects to prove?

A further distinction between the facts of this case and *Harris* is apparent. *Harris* stands for the limited proposition that if the accused succeeds in obtaining the benefit of the *Miranda* self-incrimination exclusionary rule, he cannot later take an unfair advantage of that judicially enforced benefit by waiving his Fifth Amendment right at trial and testifying free of contradiction. The defendant in *Harris*

did not suffer from the mere urging of his constitutional rights! The decision did nothing to discourage the exercise of a constitutional right! Manifestly, it was only a limitation on the benefits resulting from a successful constitutional attack! The decision here, however directly inhibits the exercise of Fourth Amendment protection. This case, unlike *Harris*, places the "sword" in the hands of the prosecutor enabling him to force an unconstitutional choice on the accused, instead of erecting a "shield" to perjury at trial.

What if petitioner had not signed the motion? Petitioner in this case was vulnerable to impeachment ostensibly because he signed the motion instead of his attorney. This is a distinction without a difference. An attorney signs as his client's agent. The substantive effect remains the same, an accused, either in his own name or through his attorney, is claiming Fourth Amendment protection in a written motion which almost inescapably includes an incriminating statement. Thus, it is to no avail here to say that petitioner was particularly subject to impeachment because he personally signed the motion. Clearly, it ignores the obvious hardship on a *pro se* defendant who has no attorney to sign his pleadings. Moreover, had the petitioner's lawyer signed the pleading, the process of impeachment would be made more difficult but not impossible. The prosecutor could show it to the accused and ask if his lawyer showed it to him and ask if he understood it and so forth. The jury would get the point.

The need for the accused to be permitted to assert Fourth Amendment claims free from use against him at trial of the motion is particularly acute in view of the fact, as frequently recognized, that narcotics trials are frequently swearing

contests: The police testify that they searched defendant incident to an arrest and found narcotics; in contrast, defendant denies that any narcotics were found. Should defendant because he denies that narcotics was found, be precluded from testing the sufficiency of the arrest upon which police say they predicated the search?

Clearly the accused could test the sufficiency of the arrest without himself testifying if he is willing to rely upon what the police testify to concerning the circumstances of the arrest. Indeed that is precisely what petitioner did here—he did not testify in support of the motion to suppress. Should the State then be allowed to use against him at trial the mere fact that he filed a motion to suppress?

Related to but by no means separate from the precise issue in this case is the broader question of the extent to which the lower court's decision will permit impeachment by means of pleading in a criminal case. Petitioner has already pointed out that the lower court's opinion is apparently premised upon the view that the mere filing of a motion to suppress may be used to impeach where the motion contains conclusions of the pleader which insinuate that petitioner committed a crime. Will the State now be allowed to impeach by showing that defendant filed a motion to suppress a confession or statement and thereby to conceal his guilt from the jury? Will the State be allowed to show that a defendant previously offered to plead guilty? (Presumably not, in view of *Kircheval* v. *United States* 274 U.S. 220 (1957), but perhaps not in view of the lower court's interpretation of *Harris*. Similarly, if petitioner's plea of unconstitutional arrest is used at trial it will open the case to collateral issues and effectively deprive defendants of a fair trial.

Pre-trial criminal pleadings should not be used for any purpose at trial. The pleadings are frequently legal conclusions and not trustworthy fact statements. Indeed, good practice often requires filing a suppression motion since you can never be certain what the police will say on the stand. Pleadings are legal manuevers engaged in by attorneys to help ensure a fair trial and remove the taint of illegal evidence from our courts of justice. Impeachment on these pleadings defeats the prospect of a fair trial and coerces an accused to incriminate himself. This underlying issue present in the instant case warrants the consideration of this Court.

2.

THE DECISION OF THE LOWER COURT EFFECTIVELY CHILLS AND IMPOSES AN IMPERMISSIBLE PENALTY ON THE EXERCISE OF FOURTH AMENDMENT RIGHTS AND IMPINGES ON THE RIGHT TO MAKE AN UNFETTERED CHOICE AS TO WHETHER OR NOT HE WILL TESTIFY IN HIS OWN DEFENSE.

This is another case in which the Court's attention is called to the inescapable conflict between two fundamental rights and in which the decision of the lower court forces petitioner to choose which of those fundamental rights he will assert. Although there are circumstances where a legitimate State interest may allow subordination of one constitutional right to another. One such interest—namely the protection of the jury from perjured testimony—was present in *Harris*. In the instant case, however, there is no such corresponding State interest and the chilling effect is ". . . unnecessary and therefore excessive." (*Jackson* v. *United States*, 390 U.S. 570 (1969)) (Holding that petitioner's Sixth Amendment right to trial by jury was unconstitu-

tionally "chilled" by statute which provided that death penalty could be imposed only by jury.)

Where as here a defendant files a written motion to suppress evidence, but does not testify in support of the motion, to hold as the lower court did that the motion itself can be used to impeach his trial testimony is to deprive petitioner of the "unfettered" choice of whether or not to testify in his own defense. *Malloy* v. *Hogan*, 378 U.S. 1, 8 (1964) (The accused has a right "to remain silent unless he chooses to speak in the unfettered exercise of his own will.") In other words, the accused's right to an "unfettered" choice is watered down when the prosecutor is allowed to use against him the mere fact that he filed a pretrial motion to suppress evidence. (Importantly, here it was not *testimony* at the motion to suppress which was used against petitioner, for petitioner did not testify in support of his motion to suppress, but it was the motion itself which was introduced against him.)

On the other hand, if the accused wishes to testify totally free of prejudicial impeachment, he could of course decide not to assert his Fourth Amendment claim that the evidence was illegally seized. But petitioner was entitled here to the protection of both the Fourth and Fifth Amendments.

This Court has held in several cases that the assertion of one constitutional right cannot be "chilled" by imposition of a penalty attached to the exercise of that right. In the Fourth Amendment situation, this Court said in *Simmons* v. *United States*, 390 U.S. 377, 393:

> "The rule adopted by the courts below does not merely impose upon a defendant a condition which may deter him from asserting a Fourth Amendment objection—it imposes a condition of a kind to which

this Court has always been peculiarly sensitive. For a defendant who wishes to establish standing must do so at the risk that the words which he utters may later be used to incriminate him. Those courts which have allowed the admission of testimony given to establish standing have reasoned that there is no violation of the Fifth Amendment's Self-Incrimination Clause because the testimony was voluntary. As an abstract matter, this may well be true. A defendant is 'compelled' to testify in support of a motion to suppress only in the sense that if he refrains from testifying he will have to forgo a benefit, and testimony is not always involuntary as a matter of law simply because it is given to obtain a benefit. However, the assumption which underlies this reasoning is that the defendant has a choice: he may refuse to testify and give up the benefit. When this assumption is applied to a situation in which the 'benefit' to be gained is that afforded by another provision of the Bill of Rights, an undeniable tension is created. Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another. We therefore hold that when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be against him at trial on the issue of guilt unless he makes no objection. (390 U.S. 377, 393, 394)

The *Simmons* decision is *a fortiori* to this case where petitioner did not in fact *testify* in support of his motion, but merely filed the motion as a means of obtaining a hearing. Here therefore the penalty was exacted for the mere assertion of the right.

In a dissenting opinion, Mr. Justice Goldenhersh, after quoting the above passage from *Simmons,* observed that the clear intent of *Simmons* was that ". . . statements made or testimony given in support of a Fourth Amendment right may not be used in the trial of a defendant who subsequently exercises his right to testify, either during the prosecutor's case-in-chief or for purposes of impeachment." (Appendix, p. 9a) The better and we suggest constitutionally accurate interpretation of *Simmons* and *Brown* is that adopted by Mr. Justice Goldenhersh.

In any event the question here presented arising as it does in the wake of *Harris* is likely to recur. This Court has already granted certiorari to consider whether a defendant who testifies at trial can be impeached by the fact that he stood moot when warned by his right to remain silent. *United States* v. *Hale* (O.T. 1974, No. 74-364, certiorari granted, December 9, 1974). This case presents a similar question—whether petitioner can be impeached by the fact that he asserted and relied upon his rights under the Fourth Amendment.

To resolve this issue and provide guidance to the lower courts, certiorari should be granted.

CONCLUSION

For the reasons urged herein, it is respectfully requested that a writ of certiorari issue to review and reverse the judgment of the Supreme Court of Illinois entered below.

Respectfully submitted,

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December 20, 1974

APPENDIX A

Docket No. 46184—Agenda 43—May, 1974.
THE PEOPLE OF THE STATE OF ILLINOIS, *Appellee*,
v. LONNIE E. STURGIS, *Appellant*.

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

Defendant, in a jury trial held in the circuit court of Cook County, was convicted of unlawful possession of narcotics. The appellate court affirmed the conviction and remanded to determine the proper sentence. (*People* v. *Sturgis*, 14 Ill. App. 3d 181.) We granted leave to appeal. The sole issue before us is whether reversible error occurred when the trial court allowed the State to use for impeachment purposes certain statements sworn to and signed by the defendant which were included in a "Motion to Quash Arrest and Suppress Evidence." The facts are fully set out in the appellate court opinion and we recite only such matters as we deem necessary to determine the issue before us.

On Friday, April 23, 1971, appointed defense counsel filed the motion which bore defendant's signature and that date. The motion in relevant part is set forth as follows:

"PEOPLE OF THE STATE OF ILLINOIS
vs.
LONNIE STURGIS
} Indictment No. 70-2545

MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

Petitioner, Lonnie Sturgis, the defendant in the above-entitled cause, moves this Honorable Court to quash his

arrest and suppress from introduction into evidence the direct and indirect products of said arrest.

In support whereof, petitioner states:

1. On *9th of July, 1970,* petitioner was arrested at or near *2114 W. Madison, Chicago, Ill.*

* * *

8. During the arrest and subsequent detention, the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence all the direct and indirect fruits of the arrest and detention, which connect petitioner with a crime."

The substance of the motion was in typewritten form except for the italicized portions which were handwritten. It was stipulated and agreed that the evidence that was to be heard during the course of the trial would be considered as evidence presented on behalf of the defendant on this motion which was thereafter denied at trial. A jury was selected that day and the cause continued until Monday, April 26, when trial commenced.

The facts presented by the State established that an undercover police officer while observing defendant sitting in a doorway area at 2114 W. Madison in Chicago saw him pick up a cigarette package, remove tinfoil from it and give it to an unknown party after an exchange of money. The officer then gave a prearranged signal to two other police officers. They approached and placed defendant in custody pursuant to an arrest warrant for a previous narcotics charge and found the cigarette package near his feet. It contained 26 tinfoil packets. Three were randomly selected, tested and found to contain heroin.

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Defendant testified that he was a drug addict looking for a "fix" and that he was with several men in a tavern doorway at 2117 W. Madison when the police approached. He said that after his arrest he was placed in a squad car. At this time one of the officers returned from the lot near the tavern, displayed a cigarette package to defendant and then inquired if the package belonged to him.

On cross examination, over defense objection, the State put questions to defendant about certain matters contained in the motion. The trial court permitted this and admitted the motion into evidence for purposes of impeachment, but the jury was not allowed to take the exhibit to the juryroom during subsequent deliberations. The State asked defendant if the police had taken any physical evidence from him and defendant denied that they had. It then challenged the credibility of this testimony by noting the variance of the addresses where the arrest was said to have been made and the allegation contained in paragraph 8 of the motion pertaining to the seizure of physical evidence. On redirect examination defendant testified that he did not know the contents of the motion but that he signed it as counsel had instructed him to do.

Relying principally on *Simmons* v. *United States* (1968), 390 U.S. 377, 19 L. Ed. 2d 1247, 88 S. Ct. 967, *Brown* v. *United States* (1973), 411 U.S. 223, 36 L. Ed. 2d 208, 93 S. Ct. 1565, and *People* v. *Luna* (1967), 37 Ill.2d 299, defendant argues that it was reversible error to permit the utilization of the suppression motion for impeachment purposes at trial. He contends that an accused in many instances must allege in the motion to suppress either possession of the item seized or the premises which were

searched in order to establish standing to raise the issue as to the propriety of the search and seizure conducted by the police. (*People* v. *McNeil* (1972), 53 Ill.2d 187.) He argues that, if an accused elects to proceed with the motion, he may later be impeached at trial by matters raised at the suppression hearing if he denies implication in the offense. He claims that "tension" is created between exercise of rights granted by the fourth and fifth amendments. Defendant therefore generally argues that a damaging admission necessary to raise a fourth mendment claim may not be used against him at the subsequent trial.

Citing *Harris* v. *New York* (1971), 401 U.S. 222, 28 L. Ed. 2d 1, 91 S. Ct. 643, the State argues that a defendant's credibility may be challenged by pretrial statements in support of his motion to suppress where there is no coercion demonstrated in obtaining these statements. The State maintains that a defendant in a criminal case should not be permitted to perjure himself in order to be acquitted. (*Commonwealth* v. *Ravenell* (1972), 448 Pa. 162, 173-174, 292 A.2d 365, 371.) Finally, the State has contended, in oral argument before us, that under the applicable law in this case it was unnecessary to establish a possessory interest in the narcotics in order to question the validity of the search. (*Jones* v. *United States* (1960), 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725.) Thus the State concludes that defendant cannot now complain that he was prejudiced by possible incriminating statements which he voluntarily made relating to possession of any items.

We must reject defendant's position concerning the applicability of the decisions of the United States Supreme Court in *Simmons* and *Brown* to this appeal. In *Simmons*

that court held "that when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial *on the issue of guilt* unless he makes no objection." (Emphasis added.) (390 U.S. at 394, 19 L. Ed. 2d at 1259.) In *Brown* the court interpreted *Simmons* to prohibit the *direct* admission at trial of an accused's testimony given during a suppression hearing in order to establish the requisite standing to seek the exclusion of certain evidence on the basis of a fourth amendment violation. 411 U.S. at 228, 36 L. Ed. 2d at 213.

We believe that *Simmons* and *Brown* must be construed in harmony with *Harris* v. *New York* (1971), 401 U.S. 222, 28 L. Ed. 2d 1, 91 S. Ct. 643, where the United States Supreme Court held that a defendant might be impeached at trial by introduction of his prior statements rendered otherwise inadmissible under *Miranda* v. *Arizona* (1966), 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602. The court in *Harris* relied upon *Walder* v. *United States* (1954), 347 U.S. 62, 65, 98 L. Ed. 503, 507, 74 S. Ct. 354, wherein it was stated:

> "It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths. Such an extension of the *Weeks* doctrine would be a perversion of the Fourth Amendment.
>
> * * * [T]here is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility."

Thus in *Harris* the court concluded that "[e]very criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury. [Citations.] Having voluntarily taken the stand, petitioner was under an obligation to speak truthfully and accurately, and the prosecution here did no more than utilize the traditional truth-testing devices of the adversary process." 401 U.S. at 225, 28 L. Ed. 2d at 4.

We therefore hold that the testimony of a defendant or documents voluntarily attested to by him in conjunction with his motion to suppress evidence may not be introduced by the State directly in its case in chief but may be used for purposes of impeachment should the defendant choose to testify at trial. To the extent that our present holding conflicts with *People* v. *Luna* (1967), 37 Ill.2d 299, which was decided prior to *Harris* v. *New York*, that decision is overruled. In the present case the introduction of matters contained in the suppression motion for impeachment purposes was not error.

Accordingly the judgment of the appellate court is affirmed.

Judgment affirmed.

MR. JUSTICE GOLDENHERSH, dissenting:

I dissent. The record in this case shows that for two obvious reasons the statements contained in the motion to suppress were not admissible for purposes of impeachment. The questions and answers which purportedly rendered them admissible were:

"Q. Your lawyer asked you if the police officers took anything from you and you said yes, your wallet, is that right?

A. Yes, they did.

Q. All right, how, is there anything that they took away from you that they didn't give back to you?

A. No, sir."

First, it is axiomatic that in order to be admissible for purposes of impeachment the prior statement must be inconsistent with the testimony and, clearly, the statements contained in the motion are not inconsistent with the defendant's answer. Secondly, the testimony shows beyond a doubt that the motion was prepared by defendant's appointed counsel, on a printed form, and defendant had not the vaguest understanding of what it contained or what it purported to show.

This case could and should have been decided on the ground that the use of the motion for purposes of impeachment was error, but on this record, harmless. In order to sustain this conviction it was not necessary to reach the constitutional questions, and it is unfortunate that the majority has used this case to overrule our earlier decision in *People* v. *Luna,* 37 Ill.2d 299, and to do violence to established constitutional principles.

I have previously pointed out that I believe *Harris* v. *New York,* 401 U.S. 222, 28 L. Ed. 2d 1, 91 S. Ct. 643, to have been wrongly decided (see dissenting opinion, *People* v. *Moore,* 54 Ill.2d 33, at 38), and I find nothing in the majority opinion in that case or in any later opinion of the Supreme Court which meets the arguments advanced in

(Supreme Court Opinion)

Mr. Justice Brennan's eloquent dissent in *Harris*. 401 U.S. at 226, 28 L. Ed. 2d at 5.

The majority, to justify its conclusion, states: "We believe that *Simmons* and *Brown* must be construed in harmony with *Harris* v. *New York* (1971), 401 U.S. 222, 28 L. Ed. 2d 1, 91 S. Ct. 643, where the United States Supreme Court held that a defendant might be impeached at trial by introduction of his prior statements rendered otherwise inadmissible under *Miranda* v. *Arizona* (1966), 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602." I fail to see why the majority of this court should assume the burden of construing *Simmons* and *Brown* in harmony with *Harris* in view of the fact that in *Brown*, decided two years after *Harris*, the Supreme Court did not attempt so to do. *Brown* does not mention *Harris* and, contrary to the majority's interpretation of *Brown*, the opinion states that the decision in *Simmons* "has removed the danger of coerced self-incrimination." *Brown* v. *United States*, 411 U.S. 223, 229, 36 L. Ed. 2d 208, 214, 93 S. Ct. 1565, 1569.

In *Simmons*, the late Mr. Justice Harlan, writing for the majority, said: "The rule adopted by the courts below does not merely impose upon a defendant a condition which may deter him from asserting a Fourth Amendment objection—it imposes a condition of a kind to which this Court has always been peculiarly sensitive. For a defendant who wishes to establish standing must do so at the risk that the words which he utters may later be used to incriminate him. Those courts which have allowed the admission of testimony given to establish standing have reasoned that there is no violation of the Fifth Amendment's Self-Incrimination Clause because the testimony was voluntary.

As an abstract matter, this may well be true. A defendant is 'compelled' to testify in support of a motion to suppress only in the sense that if he refrains from testifying he will have to forgo a benefit, and testimony is not always involuntary as a matter of law simply because it is given to obtain a benefit. However, the assumption which underlies this reasoning is that the defendant has a choice: he may refuse to testify and give up the benefit. When this assumption is applied to a situation in which the 'benefit' to be gained is that afforded by another provision of the Bill of Rights, an undeniable tension is created. Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another. We therefore hold that when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection." 390 U.S. 377, 393, 19 L. Ed. 2d 1247, 1258, 88 S. Ct. 967, 976.

To me, the clear intent of *Simmons* is that statements made or testimony given in support of a Fourth Amendment right may not be used in the trial of a defendant who subsequently exercises his constitutional right to testify, either in the prosecution's case in chief or for purposes of impeachment.

In *People* v. *Luna,* 37 Ill.2d 299, in holding that the defendant's testimony in support of his motion to sup-

press a confession could not be used to impeach him at trial this court said: "In order to avail himself of his constitutional rights under our procedure, defendant was compelled to move to suppress the confession. It also appears from the record that his testimony was essential on this motion. Defendant was therefore placed in the dilemma of either foregoing his constitutional right to a suppression of an unlawful confession, or of running the risk of his testimony being used against him at the trial. We think it is no answer to say that defendant need not have taken the stand at his trial. One ought not be forced to choose between availing himself of two equally valuable rights. * * * We believe that the ruling of the trial court in permitting the use of defendant's testimony in this case substantially dilutes the fundamental guaranties of both the Federal and Illinois constitutions, and constitutes reversible error." 37 Ill.2d 299, at 308.

Luna was decided prior to both *Simmons* and *Harris,* and I find nothing in either of those opinions which justifies its being overruled. Assuming, *arguendo,* that *Harris* permits the result reached here, this court is free to impose higher standards for the protection of constitutional rights than those set by the Supreme Court. (*Cooper* v. *California,* 386 U.S. 58, 17 L. Ed. 2d 730, 87 S. Ct. 788.) This court has employed *Harris* as a vehicle to follow the Supreme Court into regression (see *People* v. *Moore,* 54 Ill.2d 33), but we need not, as we do here, use it as the means to serve as its vanguard.

APPENDIX B

(Cross, Redirect and Recross Examination of Petitioner)

* * *

138 *Cross Examination by Mr. Onesto.*

Q. Mr. Sturgis—

Mr. Schwartz: I will ask that the State's Attorney stand.

Mr. Onesto: I will sit down, Counsel, thank you.

Mr. Schwartz: I object. I stood for his witnesses.

The Court: Overruled.

Mr. Onesto: Q. Where were you when you were arrested?

139 A. I was at Madison between Hoyne and Leavitt.

Q. And what was the address?

A. 2122 or 17, I'm not sure.

Q. It was not at 2114 as the officers testified?

A. I'm not sure of the address.

Q. Did you ever say it was 2114 West Madison?

A. Not to my knowledge.

Q. Did you ever sign a sworn statement that you were arrested at 2114 West Madison?

Mr. Schwartz: Objection.

The Court: He may answer.

The Witness: A. Not to my knowledge.

Mr. Onesto: Q. All right, now, you stated that you were arrested at 2117 or—When your lawyer questioned you, what did you tell the ladies and gentlemen the address of the place where you were arrested was?

(Examination of Lonnie Sturgis)

A. I said 21 or 22, I'm not sure.

Q. Didn't you say you were arrested at 2117 West Madison?

Mr. Schwartz: Objection.

140 The Witness: A. Yes, 2117.

Mr. Schwartz: Asked and answered.

The Court: He may answer.

The Witness: A. 2123, it's on one side of the block and they are right together, over here is a vacant lot all the way to the end.

Mr. Onesto: Q. So would you tell us again now to the best of your knowledge where you were when you were arrested?

A. 2123 I believe.

Q. Now, 2123 is across the street from 2114 West Madison, is it not?

A. There is no houses across the street.

Q. All right, everything is knocked down so that there is, in fact, no 2114 West Madison, is that correct? There is no building at 2114 West Madison?

A. Pardon?

Q. You say everything on the other side of the street is knocked down, is that correct?

A. Yes, except for a laundry.

Q. So at 2114 West Madison there is no building,

141 there is this tavern, there is nothing there, is that right?

Mr. Schwartz: Objection to this line of questioning.

The Witness: A. No.

The Court: He may answer.

Mr. Onesto: Q. Pardon me?

The Witness: A. I don't know this.

(Examination of Lonnie Sturgis)

Q. You were in the area on July 9th, 1970, you said, trying to buy narcotics, is that correct?

A. That's right.

Q. And you had abcesses?

A. That's right.

Q. And you were pretty sick, is that correct?

A. Yes, sir.

Q. And were you in need of a fix?

A. Yes, sir.

Q. And you were pretty desperate to get a fix, is that correct?

A. I had really hadn't got sick yet.

Q. But you were starting to get the symptoms, you were starting to get sick?

A. I knew I needed a fix.

142 Q. You were making efforts to get a fix, right?

Mr. Schwartz: Objection, asked and answered.

The Witness: A. I was begging.

Mr. Onesto: Q. You were begging?

A. Yes.

Q. And you would do almost anything to get a fix, right?

A. Right.

Q. You would even sell narcotics to get a fix?

Mr. Schwartz: Objection.

The Court: Sustained.

Mr. Onesto: Q. Now, you heard the police officers testifying in Court, is that right, today?

The Witness: A. Yes.

Q. And you are saying now that they didn't see or you never had the package of Winston cigarettes, is that correct?

(Examination of Lonnie Sturgis)

A. That's right.

Q. And were you ever seated, you were never seated in a doorway at 2114 West Madison because, in fact, there is no doorway there, is that right?

143 A. There is a doorway, there is several.

Q. At 2114 there is a doorway?

A. I don't know the exact address.

Q. But you were arrested on the other side of the street anyway, either 2117 or 2123, right?

A. Yes, sir.

Q. Can you read and write, Mr. Sturgis?

A. Fairly well.

Q. Was your wallet ever given back to you?

A. Yes, sir.

Q. In other words, everything that you had in your possession was given back to you by the police officers, whatever they took they gave back to you, is that right?

A. Well, what do you mean, before or after I was—

Q. Your lawyer asked you if the police officers took anything from you and you said yes, your wallet, is that right?

A. Yes, they did.

Q. All right, now, is there anything that they took away from you that they didn't give back to you?

A. No, sir.

144 Mr. Onesto: I ask that this be marked as People's Exhibit No. 6 for identification.

Mr. Schwartz: May I see it?

I will ask for a side bar conference on this.

(Thereupon the following proceedings were had in open Court but not within the hearing of the jury:)

(Examination of Lonnie Sturgis)

Mr. Schwartz: Judge, I am going to raise vehement objection to this. The State's Attorney is trying to use what is known in civil courts on a parallel basis. he is trying to introduce a motion to quash the arrest and suppress evidence in which the defendant alleged that certain things were taken from him, in order to establish, standing on the motion as you well know is a motion which is a bare legal motion which does not allege any facts other than the fact of a seizure and I would think that it would prejudice the defendant beyond repair if this is allowed to be used against him. It would be enough to, certainly make him—In other words, he's giving up alternative rights here. He is not allowing him to use the motion then.

145 The Court: This is his motion to quash an arrest and suppress evidence, and in this motion he alleges a certain fact as to where he was arrested and he swears to it under oath. The State is now trying to show that he was actually, and maintains that he was arrested at 2114, that's all.

Mr. Schwartz: All right, Judge. I prepared this motion. This motion is a motion for the record, it is a printed motion which is supplied to me by the good offices of the Public Defender which has certain blanks which I, using, the answer to the discovery that I made, to the State, using those answers as to where the man was arrested, I filled that out.

The Court: You can explain it on cross examination.

Mr. Schwartz: And I take it my objection to it has been overruled?

The Court: What is the basis of your objection?

(Examination of Lonnie Sturgis)

Mr. Schwartz: The basis of the objection is this is being used to place this against him the fact that he sought to, I am trying to articulate this the best I can, he sought to assert constitutional rights, and
146 this right is being used against him, his assertion of constitutional rights is being used to somehow incriminate and prejudice his case.

The Court: Denied.

Mr. Schwartz: I want that certified on a bill of particulars as to his findings.

(Thereupon the following proceedings were had in open Court and within the presence and hearing of the jury:)

Mr. Onesto: May I proceed?

The Court: Proceed.

Mr. Onesto: Q. Did the police officers ever take any physical evidence away from you, any tinfoil packets or any cigarette package whatsoever?

The Witness: A. No, sir.

Q. Now, before you began testifying this afternoon you took an oath, is that correct?

A. Yes, sir.

Q. Showing you now what has been marked People's Exhibit No. 6 for identification, would you look at that please? I will ask you to particularly look at Page 3 of that exhibit. Do you see a signature at the bottom of the page?

A. Yes.

147 Q. Whose signature is that?

A. It is mine.

Q. All right, now, you came before the Court with your attorney, of course, and you signed that particular document, is that right?

(Examination of Lonnie Sturgis)

A. That's right.

Q. And that document was filed with the Court, is that correct?

A. That's right.

Q. Before you signed your signature, you swore that the statements and the allegations put forth in that particular document were the truth is that correct?

A. Yes.

Mr. Schwartz: Objection.

The Court: He may answer.

Mr. Onesto: Q. Now, in this document to which you swore to the Court as the truth, did you state that on the 9th of July, 1970, you were arrested at or near 2114 West Madison, Chicago, Illinois?

The Witness: A. Or 23.

148 Q. Now, the question is in this document, Paragraph 1, you state that on the 9th of July, 1970, you were arrested at or near 2114 West Madison, Chicago, Illinois, did you say that?

A. I didn't.

Q. Did you say that in your petition?

A. I didn't state the exact words, no.

Q. All right, I show you again for the record—

Mr. Schwartz: Object.

The Court: He has already said what he said.

Mr. Onesto: Q. Did you state that during your arrest the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence all the indirect proof of the arrest and detention which would connect the prisoner with the crime? Did you say that in your petition?

(Examination of Lonnie Sturgis)

The Witness: A. No.

Q. You didn't say that, all right. I ask you to examine Paragraph 8 of People's Exhibit No. 6 for identification.

Mr. Schwartz: I'm going to object again, Judge.

The Court: Overruled.

The Witness: A. Yes.

Mr. Onesto: Q. All right, now, I will again ask,
149 referring to Paragraph 8, did you not in Paragraph 8 under oath state to this Court that during the arrest and subsequent detention the police and prosecution became aware of the physical evidence, the witnesses and other evidence, all the direct and indirect fruits of the arrest and detention which connect the Petitioner to the crime?

A. Not directed to the possession, the sale.

Q. Didn't you say that in your petition on this particular indictment?

Mr. Schwartz: Your Honor, may we approach the bench again, please.

The Witness: He's trying to cross me up.

Mr. Onesto: Q. No, I am not, sir.

(Thereupon the following proceedings were had in open Court but not within the hearing of the jury:)

Mr. Onesto: Judge, here is a man—

Mr. Schwartz: Wait, let me get on the record.

Judge, here we are presented with a man with very limited education. The sum and substance of the peti-
150 tion which the State's Attorney is reading from is, like I have stated before, it is a printed one that has been prepared by lawyers in legalese and legal jargon.

(Examination of Lonnie Sturgis)

The Court: You have a perfect right to go into this on redirect.

Mr. Schwartz: I understand this but the jury is becoming hopelessly confused by this to the prejudice of the defendant.

The Court: He has a right to impeach him from it. You can't preclude him from impeaching him.

Mr. Schwartz: But the effect of the document is this was a legal—

The Court: You have a perfect right to explain the circumstances under which he signed the document whether or not he read it whether or not he knew these facts.

Mr. Schwartz: I am making a continuing objection to the State's Attorney's use of it.

The Court: Overruled.

(Thereupon the following proceedings were had in open Court and within the presence and hearing of the jury:)

151 Mr. Onesto: Your Honor, there is an objection pending.

The Court: Overruled.

Mr. Onesto: Q. May I ask you again, Mr. Sturgis, did you not say in your petition which is marked filed April 23rd that during the arrest and subsequent detention the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence, all the direct and indirect fruits of the arrest and detention which connected the Petitioner with the crime; didn't you say that?

The Witness: A. I didn't write that out, I didn't write that motion out, my lawyer did. Pardon me, he,

the Court-appointed lawyer for me. He wasn't my choosing.

Q. Your lawyer drafted the motion, right?

A. That is what he told me it was, yes.

Q. All right, you came before the Court and you raised your right hand and you swore that the contents of this motion to the best of your knowledge was the truth and nothing but the truh?

152 A. I was informed that the motion was to suppress the evidence.

Q. You signed this motion, didn't you?

Q. And you swore that the contents of this motion were the truth, didn't you, before this Court? Well, I am waiting for an answer, Mr. Sturgis.

Mr. Schwartz: Objection to the comment of the State's Attorney.

The Court: Overruled.

Mr. Onesto: Will you answer?

The Witness: A. I am not going to answer the question.

Q. You are not going to answer the question?

A. I say how am I going to answer the question when I don't understand it.

Q. Let me put it again and if you don't understand it, you say so. You recognize this exhibit as a petition which you signed, do you not, People's Exhibit No. 6?

A. Yes.

Q. And on the date that this exhibit was filed before the Court you took an oath that the contents

153 of this particular exhibit was the truth, isn't that so?

Judge, may we have the witness answer the question?

(Examination of Lonnie Sturgis)

The Court: Do you understand the question, Mr. Sturgis?

The Witness: No, sir.

Mr. Onesto: Q. Let me ask it another way, Mr. Sturgis. People's Exhibit No. 6 for identification, you were present on the date it was filed in Court, were you not?

The Witness: A. Yes.

Q. All right, when you came into the courtroom you stood before this very bench, did you not, sir?

A. Yes.

Q. And you signed your signature to the last page of the petition, did you not?

A. Yes, sir.

Q. And before you signed your signature, you raised your right hand and the clerk administered an oath, did he not?

A. Yes.

Mr. Onesto: Judge, I have no further questions.

154 *Redirect Examination by Mr. Schwartz.*

Q. Mr. Sturgis, can you read the first line of this exhibit, this line here (indicating) can you read it out loud to the Court and to the jury?

A. "Motion to quash arrest and suppress evidence."

Q. All right, do you know that this is a legal document, Mr. Sturgis?

A. Well, in a manner of words that the State's Attorney was using, I didn't understand it.

Q. In other words, you signed at my direction, did you not?

A. Yes, sir.

(Examination of Lonnie Sturgis)

Mr. Onesto: Judge, excuse me. I am going to ask that defense counsel not lead the witness. I'm going to object to that answer.

The Court: He may answer, overruled.

Mr. Schwartz: Q. Do you happen to recall our conversation when I brought this back to you, Mr. Sturgis?

The Witness: A. Yes, sir.

Q. What did I say to you and what did you say to me?

155 Mr. Onesto: Objection, Judge.

The Court: Sustained.

Mr. Schwartz: Q. Mr. Sturgis, do you know what the words "exclusionary rule" mean?

The Witness: A. No, sir.

Q. Do you know what is the rule enunciated in Mott versus Ohio?

A. No, sir.

Q. Do you know what a seizure contemplated by the 4th Amendment to the United States Constitution is?

A. I think that means you have been before a judge and he rules on a case and then the State's Attorney goes to the Grand Jury on his own.

Q. Do you know the wording of the 4th Amendment of the United States Constitution?

A. No, sir.

Mr. Schwartz: I have no more questions.

Recross Examination by Mr. Onesto.

Q. Mr. Sturgis, are you now saying that you really don't know too much about what this document says, is that right?

(Examination of Lonnie Sturgis)

156 A. If it means what I think it means, I know.

Q. But as your counsel stated, you don't know anything about the exclusionary rule?

A. Will you explain that?

Q. No, do you know what the exclusioary rule is?

A. No, sir.

Q. You don't know what the theory behind Mott versus Ohio is?

A. No, sir.

Q. So you really didn't understand what this motion said, did you?

A. It was supposedly to quash the evidence as I stated.

Q. It was supposed to quash the evidence, right?

A. Yes, sir.

Q. That is what your reason was for filing this motion, right?

A. I didn't read it when I signed it.

Q. No, no, that's not the question. The reason for filing your motion here was to quash the evidence, right?

A. Yes, sir.

157 Q. And you didn't read it, you just signed it, is that what you are saying now?

A. Yes, sir.

Q. And you signed it because you said your lawyer or you wanted to use it to quash the evidence, right?

Mr. Schwartz: Objection, asked and answered.

The Court: He may answer.

Mr. Onesto: Q. Mr. Sturgis, you signed it because you wanted to use it to quash the evidence, suppress the evidence, is that right?

(Examination of Lonnie Sturgis)

The Witness: A. I signed it because I thought it would give me a chance to prove that I wasn't a dope dealer.

Q. Okay, but you didn't read it at the time you signed it?

A. No, sir.

Q. And you swore that the contents of this document were the truth, is that right?

Mr. Schwartz: Objection. He has answered that he didn't read it.

The Court: Sustained.

Mr. Onesto: Q. All right, let me say this then.
158 Mr. Sturgis, Lonnie Sturgis, you would say anything or swear to anything—

Mr. Schwartz: Objection, Your Honor.

Mr. Onesto: May I finish the question?

Mr. Schwartz: No, you may not.

Mr. Onesto: Q. Mr. Sturgis, you would file or you filed a petition with the Court stating that to the best of your knowledge it was true and you swore to its truth but you didn't know what was in it, is that right?

The Witness: A. I didn't know—

Q. Is that right or wrong?

A. Pardon?

Q. In other words, you swore before this Court that the contents of this petition—

Mr. Schwartz: Objection.

Mr. Onesto: Q. (Continuing) Were true to the best of your knowledge and yet you never read it, is that right?

The Witness: A. No, sir.

Q. Didn't you just say that you didn't read this document before you signed it?

159 A. That's what I said.

(Examination of Lonnie Sturgis)

Q. All right, and you swore before the Court that the contents of this document were true and correct to the best of your knowledge, did you not? Didn't you just tell the ladies and gentlemen of the jury—

Mr. Schwartz: Objection.

The Court: Overruled.

Mr. Onesto: Q. Didn't you just tell the ladies and gentlemen of the jury that you took an oath right before signing this exhibit, this document?

The Witness: A. I signed several motions, not only one.

Q. So now you don't remember whether or not you signed this motion, is that right?

A. I signed the motion, yes.

Q. In other words, you would sign just about anything if you thought it would help you?

Mr. Schwartz: Objection.

The Court: Sustained.

The Witness: A. That's your opinion of it.

160 Mr. Onesto: Q. No, it is not. I am going to ask you a question.

Mr. Schwartz: Objection and I wish to be heard.

Mr. Onesto: Judge, I don't want to ask any more questions.

Mr. Schwartz: I have a motion, Your Honor.

The Court: Anything further from this witness?

Mr. Schwartz: I may have, Your Honor, I have a motion first.

(Thereupon the following proceedings were had in open Court but not within the hearing of the jury:)

Mr. Schwartz: I am going to make a motion that I should have made before. I am going to move for a mistrial now.

(Examination of Lonnie Sturgis)

The Court: Denied.

Mr. Schwartz: On the grounds that the antics of the State's Attorney are calculated to provoke the jury into believing that the defendant was obviously a man who did not understand the legal significance of the document he signed, that he perjured himself before the Court.

161 The Court: I think, Counsel, that you should examine your own conscience when you submit documents to sign.

Mr. Schwartz: I told him to sign it. You can lead a horse to water but you can't make him drink.

Mr. Onesto: Then you'd better be careful what you ask a man to swear to in Court.

The Court: That's correct.

Overruled.

(Thereupon the following proceedings were had in open Court and within the presence and hearing of the jury:)

Mr. Onesto: I have no further questions.

Redirect Examination by Mr. Schwartz.

Q. Mr. Sturgis, did you read this document?

A. Not all of it.

Q. Did you understand the general significance of the document?

A. I thought I did.

Q. But do you, sir, know all the legal ramifications of the document?

A. No, sir.

162 Mr. Schwartz: Nothing further.

APPENDIX C

C24 MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

Petitioner, Lonnie Sturgis, the defendant in the above-entitled cause, moves this Honorable Court to quash his arrest and suppress from introduction into evidence the direct and indirect products of said arrest.

In support thereof petitioner states:

1. On 9th of July, 1970, petitioner was arrested at or near 2114 W. Madison, Chicago, Ill.

2. The arrest was a seizure as contemplated by the Fourth Amendment to the United States Constitution.

3. The Fourth Amendment of the United States Constitution guarantees the right of persons to be secure from unreasonable search and seizure of their persons, houses, papers and effects.

4. The Exclusionary Rule prohibits the introduction into evidence of the direct and indirect products of unreasonable searches and seizures, said Rule enunciated in *Mapp* v. *Ohio,* 357 U.S. 643.

5. The arrest of petitioner was made without authority of a valid search or arrest warrant.

6. The conduct of petitioner prior to his arrest was such as would not reasonably be interpreted by

the arresting officers as constituting probable cause that petitioner had committed or was about to commit a crime.

C25 7. Subsequent to petitioner's arrest he was searched, photographed, fingerprinted and otherwise processed, questioned and exhibited by the police.

8. During the arrest and subsequent detention, the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence all the direct and indirect fruits of the arrest and detention, which connect petitioner with a crime.

9. During the arrest and subsequent detention, verbal and written statements, as well as gestural signals were elicited from petitioner, the detention having provided the police with the forum for interrogation.

10. The exhibition of petitioner and his photographs caused the prosecution to become aware of witnesses which the State intends to call to testify against petitioner in this cause.

11. As a result of the arrest, the prosecution has acquired knowledge that it intends to employ in the prosecution of this cause.

Wherefore, petitioner respectfully moves this Honorable Court to quash his arrest, because of the absence of authority or probable cause to effect it, and to suppress from introduction into evidence in this cause, the following:

(Motion to Quash)

A. Physical evidence discovered directly and indirectly as a result of the arrest and detention.

B. Statements, utterances, reports of gestures and responses by petitioner during the detention following the arrest.

C. Witnesses who viewed petitioner during the detention following the arrest, as well as witnesses discovered as a result of the arrest, provided that petitioner has the right to call said witnesses to testify for the purpose of protecting his Constitutional Rights.

C26 D. Photographs, fingerprints, and other information, the product of the processing of petitioner following his arrest, and the fruits thereof.

E. All other knowledge and the fruits thereof, witnesses, statements, whether written, oral or gestural and physical evidence which is the direct and indirect product of the arrest.

/s/ Lonnie Sturgis
Petitioner

State Of Illinois
County Of Cook—ss

Lonnie Sturgis, being first duly sworn on oath, deposes and says that he has read the foregoing petition by him subscribed, that he knows the contents thereof, and that same is true in substance and in fact.

/s/ Lonnie Sturgis